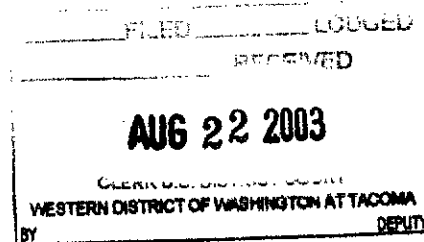


Honorable Ronald B. Leighton



03-CV-05043-M



IN THE UNITED STATES DISTRICT COURT  
FOR WESTERN WASHINGTON AT TACOMA

In re:	)	Chapter 13 No. 99-37362
	)	
	)	Internal Appeal No. 02-007
	)	
MARK A. SCHNEIDER	)	BAP No. WW-02-1658
	)	
	)	USDC No. CV03-5043RBL
Debtor.	)	
	)	Appellant's Motion for
	)	Reconsideration

**Motion:** The Law Offices of Ben F. Barcus, Appellant, by and through its attorney of record, Thomas P. Quinlan of the law firm Miller, Quinlan & Auter, P.S., Inc., respectfully requests that the Court Reconsider its Order Affirming Bankruptcy Court's Order (hereinafter "Affirming Order"), entered herein on August 11, 2003<sup>1</sup>.

**Basis:** The Court should reconsider its Affirming Order on the basis that the Appellant's request for equitable tolling was not fully addressed. Appellant's position, among other things, is that it was delayed and prejudiced in its expert's ability to obtain and complete his investigation of the allegations of

<sup>1</sup> Appellant's counsel received the same on August 20, 2003. For QUINLAN & AUTER, P.S., INC.

1 fraud and forgery. Thus, Appellant was unable to comply with the 180 day br  
2 date set forth in 11 U.S.C. §1330. See, *Statement of Facts, Appellants*  
3 *Opening Brief*.

4 A summary of the relevant dates set forth in Appellant's opening brief is as  
5 follows. An evidentiary hearing was held on January 25, 2001. Appellee's  
6 Chapter 13 plan was approved with modifications, by Bankruptcy Court Order  
7 dated April 5, 2001. In the interim, the Bankruptcy Court authorized a Fed. R.  
8 Bankr. Proc. 2004 examination of Appellee's father, Robert Schneider  
9 (hereinafter "Schneider, Sr."), on March 1, 2001. The Order allowed the out  
10 of jurisdiction examination of Schneider Sr. *Order Allowing 2004 Exam* dated  
11 March 1, 2001.  
12

13 A significant amount of effort was needed to obtain Robert Schneider  
14 Sr.'s presence. Appellant affected service upon Schneider Sr. for the out-of-  
15 state appearance and examination, which was scheduled to occur on March  
16 23, 2001; despite service of process being affected, Schneider Sr. failed to  
17 appear. This forced Appellant to enlist the service of the United States  
18 Marshall to assure Schneider, Sr.'s appearance; being compelled to appear  
19 under threat of possible action by the U.S. Marshall's Services, Schneider Sr.  
20 finally appeared on April, 19, 2001 and an examination ensued. However,  
21 Schneider, Sr. refused to answer any questions as to whether he in fact  
22 authored the letter in question purportedly under advice of counsel. *Barcus*  
23 *Affidavit*. Appellee had instructed his father not to answer any such  
24  
25  
26  
27

1 questions. *Barcus Affidavit*. However, Schneider did submit to hand writing  
 2 exemplars.

3 After obtaining the handwriting exemplars, Appellant retained the  
 4 services of a forensic specialist to analyze the signature on the letter  
 5 compared to Robert Schneider's signature. The expert concluded his  
 6 investigation and authored his Declaration on November 5, 2001. Appellant  
 7 received the same after that date. The conclusion of the expert, Mr. Timothy  
 8 Nishimura, is that Robert Schneider, a left-handed writer, was not the  
 9 signatory of the letter. Rather, the conclusion is that the signature is that  
 10 forged by Appellee. *Barcus Affidavit*. Accordingly, the Appellee's reported  
 11 schedules and his actual testimony at two 11 U.S.C. § 341 meeting(s) of  
 12 creditors, and the evidentiary hearing are materially false.  
 13

14 A summary of events relative to this Motion for Reconsideration is:

15 Relevant Dates	Subject Matter
16 January 25, 2001	Evidentiary Hearing
17 March 1, 2001	Order Allowing Examination of Father
18 March 23, 2001	First Examination date w/ no appearance
19 April 5, 2001	Order on Confirmation of Chapter 13 Plain
20 April 23, 2001	Continued Examination of Father with refusal to testify
21 June 12, 2001	Order allowing appellant relief from stay to continue 22 State Court action against co-debtors
23 June 2001 to date	Various motions and discovery in state court
24 October 5, 2001	180 day bar date under §1330
25 Nov 5, 2001	Robert Nishamura conclusion of Investigation

26  
 27 APPELLANT'S MOTION  
 FOR RECONSIDERATION -3

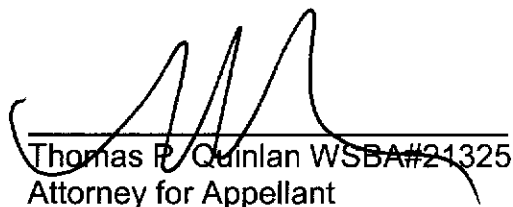
MILLER, QUINLAN & AUTER, P.S., INC.  
 1019 Regents Blvd., Suite 204  
 Fircrest, WA 98466  
 Telephone: (253) 565-5019  
 Fax: (253) 564-5007

1 Appellee's blatant and repetitive misconduct is now known to this  
2 Court; however, in light of the fact of two prior Order(s) of Contempt regarding  
3 discovery violations, and a concerted effort to thwart the Appellant's  
4 investigation of fraud, perjury and forgery relative to the son-to-father letter  
5 that first appeared at the Evidentiary Hearing, there is good cause to find that  
6 an equitable tolling of the timeline in 11 U.S.C. §1330 is warranted because  
7 Appellant could not, and did not, complete its forensic investigation, until after  
8 the 180 day period had lapsed..  
9

10 **Support.** This motion is supported by the records submitted on Appeal as  
11 designated by the Clerk of the Court.

12 **Relief Requested.** Appellant respectfully requests that the Court reconsider  
13 its Affirming Order and enter relief as requested in its opening brief.

14 Dated this 22<sup>nd</sup> day of August, 2003.

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17   
18 Thomas P. Quinlan WSBA#21325  
Attorney for Appellant  
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**Certificate of Service**

A copy of the foregoing Appellant's Motion for  
Reconsideration was served upon:

William L. Beecher  
Beecher & Conniff  
615 Commerce St., Ste. 150  
Tacoma WA 98402  
Attorney for Appellee

on August 22, 2003, by facsimile and by placing the same in an  
envelope, addressed as indicated, then sealed and deposited it with sufficient  
postage fully prepaid thereon of United States Postal Service within Pierce  
County Washington, before the hour of midnight.

Signed at Fircrest, Washington on August 22, 2003.

  
Sarah Starcevich